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12 **UNITED STATES BANKRUPTCY COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN FRANCISCO DIVISION**

15 **In re:** )  
16 **PG&E CORPORATION** ) Bankruptcy Case  
17 **- and -** ) No. 19-30088 (DM)  
18 **PACIFIC GAS AND ELECTRIC** ) Chapter 11  
19 **COMPANY,** ) (Lead Case)  
20 **Debtors.** ) (Jointly Administered)  
21 ☐ Affects PG&E Corporation ) Date: August 14, 2019  
22 ☐ Affects Pacific Gas and Electric Company ) Time: 9:30 a.m.  
23 ☒ Affects both Debtors ) Place: United States Bankruptcy Court  
24 *All papers shall be filed in the Lead Case,* ) 450 Golden Gate Avenue  
*No. 19-30088 (DM).* ) Courtroom 17  
 ) San Francisco, CA 94102  
 ) Judge: Hon. Dennis Montali  
 ) RE: Docket No. 3091

25 **RESPONSE OF THE UNITED STATES OF AMERICA TO DEBTORS' MOTION**  
26 **PURSUANT TO 11 U.S.C. §§ 105(a) and 502(c) FOR THE ESTABLISHMENT OF**  
27 **WILDFIRE CLAIMS ESTIMATION PROCEDURES**  
28

1 The United States of America, on behalf of various federal agencies, including, but not limited  
2 to, the United States Department of Agriculture, United States Forest Service (“USDA”); the United  
3 States Department of the Interior, Bureau of Land Management, and the National Park Service  
4 (“DOI”); and the Department of Homeland Security, Federal Emergency Management Agency  
5 (“FEMA”), hereby files this response to the *Debtors’ Motion Pursuant to 11 U.S.C. §§ 105(a) and*  
6 *502(c) for the Establishment of Wildfire Claims Estimation Procedures* (the “Motion”).<sup>1</sup>

#### 7 UNITED STATES CLAIMS

8 Together, USDA and DOI hold significant claims against the Debtors resulting from the  
9 Wildfires as well as other prepetition wildfires not within the Motion’s definition of Wildfires. These  
10 claims include, but are not limited to, (i) costs of suppressing wildfires on federal lands; (ii) damage to  
11 federal lands and the resources they contain including timber, habitat, wildlife, soil, and watersheds as  
12 well as the scenic, aesthetic, historic, archeological, and recreational values of those lands; and (iii)  
13 reforestation and other costs associated with stabilizing, rehabilitating, and restoring federal lands.  
14 Additionally, FEMA has provided substantial disaster assistance, pursuant to the Stafford Act, 42  
15 U.S.C. § 5121 *et seq.*, to the State of California and directly to individuals to assist in responding to  
16 the Wildfires, which assistance is recoverable against the Debtors under the Stafford Act.<sup>2</sup>

#### 17 ESTIMATION MOTION

18 Relying on 11 U.S.C. §§ 105(a) and 502(c), the Motion seeks entry of an order establishing  
19 procedures and schedules for the estimation of the Debtors’ aggregate liability for contingent and/or  
20 unliquidated claims arising out of the 2015, 2017 and 2018 Northern California Wildfires. *Motion at*  
21 *iii*. Specifically, it seeks approval for a three-phased process to estimate this liability: (1)  
22 determination of whether PG&E can be strictly liable under the state law doctrine of inverse  
23 condemnation; (2) determination of whether PG&E caused the Tubbs Fire; and (3) the Court’s  
24 determination of the estimated aggregate value of the Wildfire Claims, *id.* at 4-8. As to Phase 3, the

25  
26 <sup>1</sup> Terms not otherwise defined herein shall have the meaning ascribed to them in the Motion and  
accompanying exhibits.

27 <sup>2</sup> The United States is still in the process of identifying its claims against the Debtors. The  
28 description of some of the United States’ claims in this Response is without prejudice, and the United  
States expressly reserves its right, to assert other claims arising out of the Wildfires, any other wildfires  
for which PG&E is liable, or any other claims not related to the Wildfires.

1 Motion does not make clear whether the Debtors consider the United States' wildfire related claims as  
2 contingent or unliquidated and thus, subject to that phase. Indeed, the focus of the proposed  
3 estimation process appears to be individual tort victims' Wildfire Claims, *Motion* at 1 ("Tens of  
4 thousands of California residents whose lives have been affected by the Wildfires need to know  
5 whether, and how much, they will recover from PG&E."), as opposed to the wildfire related claims of  
6 governmental units like the United States.

#### 7 RESPONSE

8 The United States takes no position with respect to the Motion's first two phases of the  
9 proposed process. With respect to Phase 3, the United States acknowledges the desire and need to  
10 establish procedures for dealing with individual tort victims' Wildfire Claims. The Motion is,  
11 however, unclear whether the United States' wildfire related claims would be subject to the section  
12 502(c) estimation proceeding, and its requested relief does not include the Court making such a ruling.  
13 The United States does not believe its wildfire related claims are subject to section 502(c) estimation,  
14 but if the Debtors believe they are, the Court will need to resolve the issue in a subsequent proceeding.  
15 Accordingly, the United States files this response to expressly reserve its right in any further  
16 proceedings to be heard on whether its wildfire related claims can be included in any estimation  
17 proceeding and/or be heard as to the procedures for such a proceeding.

18 By its terms, section 502(c) applies to contingent or unliquidated claims. If a claim is neither  
19 contingent nor unliquidated, it is not subject to estimation under section 502(c). *In re Rhead*, 179 B.R.  
20 169, 172 (Bankr. D. Ariz. 1995) (citing *In re Continental Airlines*, 981 F.2d 1450 (5<sup>th</sup> Cir. 1993)).

21 While the Bankruptcy Code does not define contingent, the Ninth Circuit has held that "a  
22 contingent debt is one which the debtor will be called upon to pay only upon the occurrence or  
23 happening of an extrinsic event which will trigger the liability of the debtor to the alleged creditor."  
24 *Fostvedt v. Dow (In re Fostvedt)*, 823 F.2d 305, 306 (9<sup>th</sup> Cir. 1987) (citations omitted). Hence, "a debt  
25 is noncontingent if all events giving rise to liability occurred prior to the filing of the bankruptcy  
26 petition," *Nicholes v. Johnny Appleseed (In re Nicholes)*, 184 B.R. 82, 88 (B.A.P. 9<sup>th</sup> Cir. 1995), even  
27 if the debt is unliquidated or disputed, *id.* at 88 n.7. While *Fostvedt* and *Nicholes* interpreted the  
28 definition of contingent for purposes of chapter 13 eligibility under section 109(e), courts have applied

1 the same definition to section 502(c). *In re Audre, Inc.*, 202 B.R. 490, 492 (Bankr. S.D. Cal. 1996); *In*  
2 *re Kennan*, 201 B.R. 263, 265 (Bankr. S.D. Cal. 1996).<sup>3</sup>

3 The Bankruptcy Code also does not define the term liquidated, but “whether a debt is  
4 liquidated turns on whether it is subject to ready determination and precision in computation of the  
5 amount due.” *In re Fostvedt*, 823 F.2d at 306. Moreover, a debt is unliquidated even if liability has  
6 not been adjudicated or it is disputed. *Slack v. Wilshire Ins. Co. (In re Slack)*, 187 F.3d 1070, 1075  
7 (9<sup>th</sup> Cir. 1999) (section 109(e) case). Indeed, even where courts consider claims based in tort, they  
8 have held those claims were liquidated so long as the claim amount was readily determinable. *In re*  
9 *Corson*, 2004 WL 5865045 \*5 n.10 (Bankr. E.D. Pa. 2004) (collecting cases). As with the term  
10 contingent, courts have used the same definition from section 109(e) decisions in interpreting the term  
11 unliquidated in section 502(c). *In re Audre, Inc.*, 202 B.R. at 492; *In re Kennan*, 201 B.R. at 265.

12 As noted, the United States is continuing the process of determining its claims, including those  
13 that might be wildfire related. Nevertheless, it believes that its wildfire related claims, as identified  
14 and developed by the October 21, 2019 bar date, are neither contingent nor unliquidated. They are not  
15 contingent because all the events giving rise to the United States’ wildfire related claims (prepetition  
16 wildfires) occurred prior to the Debtors’ petition date. No extrinsic event must occur to trigger the  
17 Debtors’ liability. Moreover, the claims are liquidated because the vast majority of their amounts are  
18 readily ascertainable in the form of already expended costs for fire suppression and other emergency  
19 services, debris removal and clean up, reforestation and rehabilitation of damaged federal lands,  
20 repair/replacement of damaged infrastructure, financial assistance to individuals for housing and other  
21 needs, direct temporary housing, and associated administrative costs.

22 Therefore, the United States’ wildfire related claims are not subject to estimation under section  
23 502(c).

24  
25  
26 <sup>3</sup> The Supreme Court has held that there is no difference between the definitions of “claim” and  
27 “debt” in the Bankruptcy Code. *Penn. Dep’t of Pub. Welfare v. Davenport*, 495 U.S. 552, 558 (1990)  
28 (finding that by defining “ ‘debt’ as a ‘liability on a claim,’ ” Congress intended “that the meanings of  
‘debt’ and ‘claim’ be coextensive”); *accord Davis v. U.S. Bank, N.A. (In re Davis)*, 778 F.3d 809, 812  
(9<sup>th</sup> Cir. 2015).

1 CONCLUSION

2 The United States takes no position on the first two phases requested in the Motion. Because  
3 its claims are neither contingent nor unliquidated, the United States reserves, however, its right to be  
4 heard, if needed, in any further proceedings on whether its wildfire related claims can be included in  
5 the proposed Phase 3 estimation proceeding. To the extent the Court does subsequently order its  
6 wildfire related claims are subject to section 502(c), the United States further reserves its right to be  
7 heard on the procedures for such a proceeding.<sup>4</sup>

8  
9 Date: August 7, 2019

Respectfully submitted,

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24 CERTIFICATE OF SERVICE

25 I hereby certify that on August 7, 2019, I electronically filed the foregoing Response with the Clerk of the Court  
26 by using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

27 /s/ Matthew J. Troy  
28 Matthew J. Troy  
Senior Trial Counsel  
Attorney for United States

26 <sup>4</sup> The United States also reserves its right to object to any plan that purports to classify the United  
27 States' wildfire related claims as Wildfire Claims whose only source of recovery is a litigation trust with  
28 a channeling injunction and a capped funding amount established pursuant to an estimation proceeding.  
*See Response of the United States of America to Motion of Ad Hoc Committee of Senior Unsecured  
Noteholders to Terminate the Debtors' Exclusivity Periods Pursuant to Section 1121(d)(1) of the  
Bankruptcy Code (Docket No. 3010).*